



19 JUL 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

In re Application of TRIBUZIO et al :
U.S. Application No.: 10/529,728 :
PCT Application No.: PCT/EP03/10804 :
Int. Filing Date: 29 September 2003 :
Priority Date Claimed: 30 September 2002 :
Attorney Docket No.: 070222-0014 :
For: A PROCESS FOR THE PRODUCTION OF :
WHEAT FLOUR :

DECISION

This is in response to applicant's "Supplemental Renewed Petition Under 37 C.F.R. § 1.47(a)" filed 12 July 2006.

BACKGROUND

On 29 September 2003, applicant filed international application PCT/EP03/10804, which claimed priority of an earlier Italy application filed 30 September 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 08 April 2004. The thirty-month period for paying the basic national fee in the United States expired on 30 March 2005.

On 30 March 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 August 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 19 October 2005, applicant filed a petition under 37 CFR 1.47(a).

On 28 February 2006, this Office mailed a decision dismissing the 19 October 2005 petition.

On 12 July 2006, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Petitioner has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition states that joint inventor Alberto Lodi refuses to sign the application papers. The renewed petition adequately demonstrates that a bona fide attempt was made to present a copy of the complete application papers to Lodi for signature (see affidavit of Franco Guariglia, ¶2 and Exhibit B). Furthermore, the renewed petition sufficiently illustrates that Lodi refuses to sign. In particular, Lodi has not responded to the letter delivered to him on 17 June 2006. Thus, it can be concluded with reasonable certainty that Lodi refuses to join in the application.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 29 September 2003, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 19 October 2005.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459



19 JUL 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Alberto Lodi
Via Bellini, 48
I-43023 Monticelli (Parma)
Italy

In re Application of TRIBUZIO et al
U.S. Application No.: 10/529,728
PCT Application No.: PCT/EP03/10804
Int. Filing Date: 29 September 2003
Priority Date Claimed: 30 September 2002
For: A PROCESS FOR THE PRODUCTION OF
WHEAT FLOUR

Dear Alberto Lodi:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Bryan Tung
PCT Legal Examiner
PCT Legal Office
Telephone: 571-272-3303
Facsimile: 571-273-0459

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096
Attorney Docket No.: 070222-0014